

CHAPTER 409

PROPERTY

HOUSE BILL 21-1229

BY REPRESENTATIVE(S) Titone and Ricks, Bennett, Gonzales-Gutierrez, Hooton, Jackson, Lontine, Roberts, Valdez A., Weissman, Bird, Jodeh, Kennedy, Kipp, Snyder, Woodrow;
also SENATOR(S) Fields, Bridges, Gonzales, Hansen, Moreno, Story.

AN ACT

CONCERNING INCREASED PROTECTIONS FOR UNIT OWNERS IN THE GOVERNANCE OF UNIT OWNERS' ASSOCIATIONS UNDER THE "COLORADO COMMON INTEREST OWNERSHIP ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 37-60-126, **amend** (11)(a) as follows:

37-60-126. Water conservation and drought mitigation planning - programs - relationship to state assistance for water facilities - guidelines - water efficiency grant program - definitions - repeal. (11) (a) (I) Any section of a restrictive covenant or of the declaration, bylaws, or rules and regulations of a common interest community, all as defined in section 38-33.3-103, and any rule or policy of a special district, as defined in section 32-1-103 (20), that prohibits or limits xeriscape, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, ~~or~~ requires cultivated vegetation to consist wholly or partially of turf grass, ~~OR PROHIBITS THE USE OF NONVEGETATIVE TURF GRASS IN THE BACKYARD OF A RESIDENTIAL PROPERTY~~ is hereby declared contrary to public policy and, on that basis, is unenforceable. This subsection (11)(a) does not prohibit common interest communities or special districts from adopting and enforcing design or aesthetic guidelines or rules that ~~require~~ **APPLY TO** drought-tolerant vegetative ~~OR NONVEGETATIVE~~ landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on property that is subject to the guidelines or rules; ~~EXCEPT THAT THE GUIDELINES OR RULES MUST NOT PROHIBIT THE USE OF NONVEGETATIVE TURF GRASS IN THE BACKYARD OF A RESIDENTIAL PROPERTY.~~

(II) THIS SUBSECTION (11)(a), AS AMENDED BY HOUSE BILL 21-1229, ENACTED

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

IN 2021, DOES NOT APPLY TO AN ASSOCIATION THAT INCLUDES TIME SHARE UNITS, AS DEFINED IN SECTION 38-33-110 (7).

SECTION 2. In Colorado Revised Statutes, 38-30-168, **amend** (2) introductory portion and (2)(a) as follows:

38-30-168. Unreasonable restrictions on renewable energy generation devices - definitions. (2) Subsection (1) of this section ~~shall~~ DOES not apply to:

(a)(I) Aesthetic provisions that impose reasonable restrictions on the dimensions, placement, or external appearance of a renewable energy generation device and that do not:

~~(A)~~ (A) ~~Significantly~~ Increase the cost of the device ~~or~~ BY MORE THAN TEN PERCENT;

~~(B)~~ (B) ~~Significantly~~ Decrease its THE performance or efficiency OF THE DEVICE BY MORE THAN TEN PERCENT; OR

(C) REQUIRE A PERIOD OF REVIEW AND APPROVAL THAT EXCEEDS SIXTY DAYS AFTER THE DATE OF APPLICATION. IF AN APPLICATION FOR INSTALLATION OF A RENEWABLE ENERGY GENERATION DEVICE IS NOT DENIED OR RETURNED FOR MODIFICATIONS WITHIN SIXTY DAYS, IT IS DEEMED APPROVED. THE REVIEW PROCESS MUST BE TRANSPARENT; DENIAL OF APPROVAL MUST NOT BE ARBITRARY OR CAPRICIOUS; AND THE BASIS FOR ANY DENIAL MUST BE DESCRIBED IN REASONABLE DETAIL.

(II) THIS SUBSECTION (2)(a), AS AMENDED BY HOUSE BILL 21-1229, ENACTED IN 2021, DOES NOT APPLY TO AN ASSOCIATION THAT INCLUDES TIME SHARE UNITS, AS DEFINED IN SECTION 38-33-110 (7).

SECTION 3. In Colorado Revised Statutes, 38-33.3-106.5, **amend** (1)(i)(I) as follows:

38-33.3-106.5. Prohibitions contrary to public policy - patriotic, political, or religious expression - emergency vehicles - fire prevention - renewable energy generation devices - affordable housing - drought prevention measures - child care - definitions. (1) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit any of the following:

(i)(I)(A) The use of xeriscape, NONVEGETATIVE TURF GRASS, or drought-tolerant vegetative landscapes to provide ground covering to property for which a unit owner is responsible, including a limited common element or property owned by the unit owner. Associations may adopt and enforce design or aesthetic guidelines or rules that ~~require~~ APPLY TO NONVEGETATIVE TURF GRASS AND drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on a unit owner's property or on a limited common element or other property for which the unit owner is responsible. AN ASSOCIATION MAY RESTRICT THE INSTALLATION OF NONVEGETATIVE TURF GRASS TO REAR YARD LOCATIONS ONLY.

(B) THIS SUBSECTION (1)(i), AS AMENDED BY HOUSE BILL 21-1229, ENACTED IN 2021, DOES NOT APPLY TO AN ASSOCIATION THAT INCLUDES TIME SHARE UNITS, AS DEFINED IN SECTION 38-33-110 (7).

SECTION 4. In Colorado Revised Statutes, 38-33.3-317, **amend** (4); and **add** (1)(h.5), (1)(h.6), (4.5), and (8) as follows:

38-33.3-317. Association records - rules. (1) In addition to any records specifically defined in the association's declaration or bylaws or expressly required by section 38-33.3-209.4 (2), the association must maintain the following, all of which shall be deemed to be the sole records of the association for purposes of document retention and production to owners:

(h.5) A LIST OF THE CURRENT AMOUNTS OF ALL UNIQUE AND EXTRAORDINARY FEES, ASSESSMENTS, AND EXPENSES THAT ARE CHARGEABLE BY THE ASSOCIATION IN CONNECTION WITH THE PURCHASE OR SALE OF A UNIT AND ARE NOT PAID FOR THROUGH ASSESSMENTS, INCLUDING TRANSFER FEES, RECORD CHANGE FEES, AND THE CHARGE FOR A STATUS LETTER OR STATEMENT OF ASSESSMENTS DUE;

(h.6) ALL DOCUMENTS INCLUDED IN THE ASSOCIATION'S ANNUAL DISCLOSURES MADE PURSUANT TO SECTION 38-33.3-209.4.

(4) The association may impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for copies of association records. The charge may not exceed the estimated cost of production and reproduction of the records, INCLUDING THE COSTS OF COPYING, MAILING, AND ANY NECESSARY SPECIAL PROCESSING.

(4.5) IF THE ASSOCIATION FAILS TO ALLOW INSPECTION OR COPYING OF RECORDS IN ACCORDANCE WITH THIS SECTION WITHIN THIRTY CALENDAR DAYS AFTER RECEIPT OF A WRITTEN REQUEST SUBMITTED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND PAYMENT OF ANY FEES REQUIRED PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE ASSOCIATION IS LIABLE FOR PENALTIES IN THE AMOUNT OF FIFTY DOLLARS PER DAY, COMMENCING ON THE ELEVENTH BUSINESS DAY AFTER THE ASSOCIATION RECEIVED THE WRITTEN REQUEST, UP TO A MAXIMUM OF FIVE HUNDRED DOLLARS OR THE UNIT OWNER'S ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE REFUSAL, WHICHEVER IS GREATER.

(8) SUBSECTIONS (1)(h.5), (1)(h.6), AND (4.5) OF THIS SECTION, AS ADDED BY HOUSE BILL 21-1229, ENACTED IN 2021, AND SUBSECTION (4) OF THIS SECTION, AS AMENDED BY HOUSE BILL 21-1229, ENACTED IN 2021, DO NOT APPLY TO AN ASSOCIATION THAT INCLUDES TIME SHARE UNITS, AS DEFINED IN SECTION 38-33-110 (7).

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general

election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: July 2, 2021